

REMARKS

Claims 1-4 and 25-38 are pending in this application. Claims 15-24 have been withdrawn. New claims 35-38 have been added by the present Amendment. Claims 1-4 and 25-34 stand rejected. Claims 1, 25 and 35-38 are in independent form.

Rejections

In the "Response to Arguments" section of the office action, the Examiner contends that certain of the claimed features have little patentable weight. In addition, the Examiner contends that, while applicants distinguish the claims based on, for example, the fact that the claims recite two separate transactions (one between a producer (farmer) and an intermediary (elevator operator), and a second separate transaction between the intermediary (elevator operator) and a commodities exchange (exchange)), the Examiner contends that the claims do not positively recite the separate transactions.

In response to the Examiner, and without conceding the correctness of the Examiner's assertions, by this Amendment, applicants have added new independent claims 35-38, in part, to address the Examiner's concerns.

New independent claim 35 is directed to a system for facilitating a first transaction between a farmer and an elevator operator located locally to the farmer, and a second transaction between the elevator operator and a commodities exchange, comprising: one or more computerized means, including: "means for receiving an electronic communication from the elevator operator, the communication including a name, desired quantity and basis for an agricultural commodity that the elevator operator desires to purchase for delivery to the elevator operator's premises;" "means for automatically requesting data from the commodities exchange, the data including a current trading price of the commodity;" "means for automatically calculating, for the elevator operator, a customized flat price by subtracting the basis received from the elevator operator from the current trading price obtained from the commodities exchange;" "means for automatically generating a portion of a web page specific to the elevator operator, the web page including the quantity of the agricultural commodity desired to be

purchased by the elevator operator, and the elevator operator's customized flat price for the agricultural commodity;" "means for, upon a request by the farmer, transmitting to the farmer the portion of a web page;" "means for receiving a response from the farmer indicating an ability to physically deliver an available quantity of the agricultural commodity to the premises of the elevator operator;" "means for automatically communicating with the commodities exchange on behalf of the elevator operator to attempt to obtain a futures contract for the agricultural commodity;" and "means for, only if a futures contract is obtained, automatically generating a contract between the farmer and the elevator operator for delivery of the agricultural commodity to the premises of the elevator operator."

Applicants submit that www.usafutures.com does not describe the combination of features recited by claim 35. For example, www.usafutures.com does not describe "means for receiving an electronic communication from the elevator operator, the communication including a name, desired quantity and basis for an agricultural commodity that the elevator operator desires to purchase for delivery to the elevator operator's premises." While www.usafutures.com appears to provide a platform for facilitating trades, such trades are not based on purchases "for delivery to the elevator operator's premises." Trades at commodities exchanges are typically priced for delivery to the site of the exchange, even though delivery is typically never executed. Thus, www.usafutures.com does not describe "means for receiving an electronic communication from the elevator operator, the communication including a name, desired quantity and basis for an agricultural commodity that the elevator operator desires to purchase for delivery to the elevator operator's premises." Accordingly, for these reasons, applicants submit that new claim 35 is patentable over www.usafutures.com.

Likewise, www.usafutures.com does not describe "means for receiving a response from the farmer indicating an ability to physically deliver an available quantity of the agricultural commodity to the premises of the elevator operator." Trading systems such as that of www.usafutures.com are directed to facilitate trades of commodities futures, and are not involved with or directed to "receiving a response from the farmer indicating an ability to physically deliver an available quantity of the agricultural commodity to the premises of the

elevator operator." Accordingly, for these additional reasons, applicants submit that new claim 35 is patentable over www.usafutures.com.

Similarly, www.usafutures.com does not describe "means for, only if a futures contract is obtained, automatically generating a contract between the farmer and the elevator operator for delivery of the agricultural commodity to the premises of the elevator operator." While the Examiner contends that any party can access the system of www.usafutures.com and participate in a trade, again, trades facilitated by www.usafutures.com are not directed to contracts "between the farmer and the elevator operator for delivery of the agricultural commodity to the premises of the elevator operator." Accordingly, for these additional reasons, applicants submit that new claim 35 is patentable over www.usafutures.com.

Moreover, www.usafutures.com does not describe the claimed combination of features of "means for receiving a response from the farmer indicating an ability to physically deliver an available quantity of the agricultural commodity to the premises of the elevator operator;" in combination with "means for automatically communicating with the commodities exchange on behalf of the elevator operator to attempt to obtain a futures contract for the agricultural commodity." Accordingly, for these additional reasons, applicants submit that new claim 35 is patentable over www.usafutures.com.

Thus, new independent claim 36 is directed to a system for facilitating a first transaction between a farmer and an elevator operator, and a second transaction between the elevator operator and a commodities exchange, comprising: one or more processors and a memory in operative communication with the processors, the memory storing a plurality of processing instructions that enable the one or more processors to: "receive from the elevator operator, a communication including a name, a quantity and a basis for an agricultural commodity that the elevator operator desires to purchase for delivery to the elevator operator's premises;" "automatically request from the commodities exchange data comprising including a current trading price of the commodity;" "automatically calculate a customized flat price for then agricultural commodity by subtracting the basis received from the elevator operator from the current trading price obtained from the commodities exchange;" "automatically generate a

portion of a web page specific to the elevator operator, the web page including the quantity of the agricultural commodity desired to be purchased by the elevator operator, and the elevator operator's customized flat price for the agricultural commodity;" "upon a request by the farmer, transmit to the farmer the portion of the web page;" "receive a response from the farmer a response indicating an ability to physically deliver an available quantity of the agricultural commodity to the premises of the elevator operator;" "automatically communicate with the commodities exchange on behalf of the elevator operator to attempt to obtain a futures contract for the agricultural commodity;" and "if the futures contract is obtained, automatically generate a contract between the farmer and the elevator operator for delivery of the quantity of the agricultural commodity to the premises of the elevator operator."

New independent claims 36 recites a system having features similar to those discussed above with respect to claim 35. Accordingly, for at least the reasons discussed above with respect to the patentability of claim 35, applicants submit that new claim 36 is also patentable over www.usafutures.com.

New independent claims 37 and 38 are is directed to systems having features similar to those discussed above with respect to claims 35 and 36. Accordingly, for at least the reasons discussed above with respect to the patentability of claims 35 and 36, applicants submit that new claims 37 and 38 are also patentable over www.usafutures.com.

Rejections Under 35 U.S.C. § 102(b)

Claims 1-4 and 25-34 stand rejected under 35 U.S.C. § 102(b) as allegedly anticipated by the web pages accessible under the IP address www.usafutures.com allegedly as of January 25, 1999. Applicants respectfully submit that www.usafutures.com does not describe each and every element of claims 1-4 and 25-34 of the present application.

As understood by applicants, www.usafutures.com describes an example of hedging soybeans. The example describes that hedging in the futures market is a two-step process. In the first step, if a farmer is planning on selling a cash commodity at a later time, the farmer sells a futures contract. In the second step, when the cash market transaction takes place, the farmer closes his position in the futures contract. Thus, the example appears to describe a method of

hedging in the futures market that has been known and used for many years, and which is described in the background of the present patent application.

As understood by applicants, www.usafutures.com also describes the existence of an Internet-based trading platform for trading commodities via the Internet. The Internet trading platform is described as allowing a trader to enter orders, receive fill prices, and interact with a broker.

Embodiments of claim 1 of the present application are directed to, *inter alia*, commercial transactions between producers (farmer) and intermediaries (elevator operator) who purchase commodities from the producers (farmer). The system can: 1) receive electronic communications from an intermediary (elevator operator); 2) request data from a commodities exchange, wherein the data includes a current trading price of the commodity; 3) generate at least a portion of a web page specific to the intermediary (elevator operator) based upon ... data obtained from the commodities exchange (exchange); 4) transmit the web page to a producer (farmer), ...the web page includes the quantity of the agricultural commodity desired to be purchased by the intermediary (elevator operator), and a flat price for the commodity; 5) calculate the flat price by adding the basis provided by the intermediary (elevator operator) from the current trading price obtained from the commodities exchange (exchange); 6) receive responses from producers (farmer) indicating an ability to deliver an available quantity of the commodity to the intermediary; 7) communicate with the commodities exchange (exchange) on behalf of the intermediary (elevator operator) in order to attempt to obtain a futures contract for the commodity; and 8) generate a contract between the producer (farmer) and the intermediary (elevator operator).

As understood by Applicants, the hedging example in www.usafutures.com is a transaction between a [farmer and an exchange]. In addition, the Internet-based trading platform of www.usafutures.com is also for single two-party transactions.

In contrast, the invention recited by claim 1 of the present application describes a system for facilitating a transaction between a [farmer and an elevator operator], and, simultaneously, a separate transaction between the [elevator operator and an exchange]. Because, unlike the two-

party transaction of the www.usafutures.com example, the invention recited by claim 1 is directed to a first two-party transaction, and a second two-party transaction, facilitated by the same system, the present invention is directed to a more complex transaction than that of www.usafutures.com, and beneficially overcomes additional problems, not addressed by the system in www.usafutures.com.

As understood by Applicants, the Internet-based trading platform of www.usafutures.com would display a listing from the **exchange** to the **farmer**. In contrast, embodiments of the invention recited by claim 1 of the present application can generate a web page specific to the **elevator operator** based upon data from the **exchange**, and transmit the web page to a **farmer**. Thus, by way of embodiments of the claimed invention, a farmer can view different separate web pages from different elevator operators. Each of the web pages of the different elevator operators has prices that reflect the local travel costs of a commodity between the farmer and the elevator. In addition, each of the displayed prices is also affected by data from the exchange.

Thus, Applicants submit that www.usafutures.com does not teach or suggest all of the features of amended claim 1 of the present application, and Applicants request withdrawal of the rejection to amended claim 1 under 35 U.S.C. 102.

Moreover, Applicants note that the Examiner has rejected the claims under 35 U.S.C. 102 in view of a single reference, Applicants do not understand the www.usafutures.com reference to describe each of the features recited by claim 1 of the present application. Further, from Applicants' review of the Office Action, Applicants cannot determine where in the www.usafutures.com reference the Examiner is alleging each of the features recited by claim 1 can be found. Applicants respectfully request that either the Examiner withdraw the rejection of claim 1 of the present application under 35 U.S.C. 102, or, if the Examiner maintains the rejection, that the Examiner clearly and specifically point out where in www.usafutures.com a description of each and every claim element may allegedly be found.

It is the Examiner's burden to present a *prima facie* case of anticipation by specifically pointing out the rational for finding each and every element of the claimed invention. "The examiner bears the burden of presenting at least a *prima facie* case of anticipation. . . . Only if

that burden is met, does the burden of going forward shift to the applicant.” In re Sun, 1993 U.S. App. LEXIS 34020 (Fed. Cir., 1993) (emphasis added).

As understood by Applicants, the Examiner has not provided an explanation of where each and every claim element can be found in www.usafutures.com and has not, therefore, met his burden.

For example, the Examiner contends that the “system has a web page and each account holder or client would have access specific to their own account.” The Examiner provides no support for this statement and Applicants (even though Applicants bears no such burden) cannot find support in www.usafutures.com.

In another example, the Examiner states in the Office Action that the calculation of flat price is an inherent feature of www.usafutures.com. Specifically, the Examiner contends that the “determination or calculation of a flat price is an inherent feature of agricultural price structure. A broker would be well aware of this old and well-known simple mathematical relation.”

As understood by Applicants, there is absolutely no support or evidence presented by the Examiner for this statement. Not only is this statement unsupported, but it is not the proper test for finding an anticipating element. The test is not merely whether a particular element is well known in the art or inherent in the reference, anticipation is only found when the arrangement of elements in the reference is identical to the claimed arrangement. In re Bond, 910 F.2d 831, 832 (Fed. Cir., 1990). Thus, for these additional reasons, Applicants respectfully request withdrawal of the rejection to claim 1 of the present application over www.usafutures.com.

Still further, the 35 U.S.C. 102 rejection to claim 1 of the present invention over www.usafutures.com should be withdrawn because, for a reference to anticipate, not only must the identical invention be disclosed in as complete detail as shown in the claim, Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236 (Fed. Cir. 1989), the elements disclosed by the reference must be arranged in such reference as recited by the claim. In re Bond, 910 F.2d 831 (Fed. Cir. 1990).

Applicants respectfully submit that uasfutures.com does not describe the elements disclosed by the reference arranged in such reference as recited by the claim. For example, claim

1 of the present application recites “a fourth computing sub-system operatively coupled to the first, second and third computing sub-systems” with “the fourth computing subsystem configured with means for receiving responses from producers indicating an ability to deliver an available quantity of the commodity to the intermediary” and “means for communicating with the commodities exchange on behalf of the intermediary in order to attempt to obtain a futures contract for the commodity in an amount as close as possible to (within pre-set parameters), but not exceeding the available quantity.”

Thus, as described above, not only does the invention recited by claim 1 of the present application permit on-line commodities exchange between buyers (or intermediaries) and sellers (or producers), but further seeks to execute a separate transaction on behalf of the buyer based on the available quantity of grain that the producer agrees to deliver.

As understood by Applicants, nowhere does www.usafutures.com describe a system that permits a buyer and seller to exchange a commodity in combination with the architecture required to execute a separate transaction on behalf of the buyer with a commodities exchange based on the amount (i.e., the available quantity) of the commodity the buyer and seller are exchanging. As such, for these additional reasons, Applicants respectfully request the above-discussed rejection be withdrawn.

Each of dependent claims 2-4 ultimately depends from independent claim 1. Accordingly, claims 2-4 are patentable over www.usafutures.com, at least for the reasons stated above with respect to the rejection to claim 1, and Applicants request that the rejection to amended claim 1 under 35 U.S.C. 102 be withdrawn.

Claims 25-34 are similar to previously cancelled claims 5-14. Independent claim 25 recites features similar to claim 1, described above. For example, claim 25 recites a system for facilitating commercial transactions. The system comprises a first computing sub-system configured to receive communications from a logically external intermediary, a memory associated with the first computing sub-system wherein the memory includes information relating to the intermediary, wherein the communications received from the intermediary will selectively affect the information relating to the intermediary, and a second computing sub-

system operatively coupled to the first computing subsystem and the memory, the second computing sub-system configured to selectively request data from an external source and further configured to generate an exchange structure specific to the intermediary based upon the information stored in the memory for the intermediary and the data obtained from the external source. The second computing subsystem can transmit the exchange structure to a third party. The system also comprises a third computing sub-system operatively coupled to the first and second computing sub-systems, the third computing subsystem configured to facilitate commercial transactions between the third party and the intermediary and to automatically engage in a commercial transaction with a centralized exchange on behalf of the intermediary.

Accordingly, Applicants submit that claim 25 is patentable over www.usafutures.com at least for the reasons stated above with respect to the rejections to claim 1.

Each of dependent claims 26-34 ultimately depends from claim 25. Accordingly Applicants submit that each of claims 26-34 is patentable over www.usafutures.com, at least for the reasons stated above with respect to the rejection to claim 25.

For sake of brevity, Applicants have refrained from discussing in the present Amendment some arguments set forth in responses previously submitted during prosecution of the present application. Applicants, however, do not concede the correctness of any rejections previously set forth by the Examiner, and Applicants reserve the right to present previously presented arguments in future communications in the prosecution of the present application.

Rejections Under 35 U.S.C. § 112, Second Paragraph

In the office Action, the Examiner has rejected claim 25, and claims 26-34 depending therefrom, as being indefinite for allegedly not clearly being directed to a statutory class.

Applicants submit that claims 25, which recites "A system," is clearly directed to a system. Claim 25, and claims 26-34, recite certain limitations that describe the manner in which the components of the claimed system interact, and processes that they perform. Such a claim form is in accordance with statutory subject matter, as described, for example, in the "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility." *See* MPEP § 2106(IV)(B).

Accordingly, applicants submit that claim 25, and claims 26-34 depending therefrom, meet the requirements of 35 U.S.C. § 112, Second Paragraph, and withdrawal of the rejections to those claims under 35 U.S.C. § 112, Second Paragraph is requested.

Conclusion

In view of the above remarks, reconsideration and allowance of the present application is respectfully requested. If any fee is due, please charge the required fee to deposit account number 50-1358. Applicants' undersigned attorney may be reached by telephone at (973) 597-2500.

Respectfully submitted,

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